IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.605 OF 2004

M/s.Sumangal Publishing Company .. Appellant

Versus

Maharashtra State Bureau of Text

Book Production and Curriculum .. Respondent

Mr.S.G.Karandikar for appellant

Mr.S.G.Page with Mr.S.R.Page for Respodnent

CORAM : P.V.KAKADE, J.

DATE : 18TH OCTOBER, 2004

P.C.:

1. This is an appeal preferred by the appellant-defendant against the Judgment and Order passed by Additional District Judge, Pune dated 10.11.2003 allowing the appeal of Respondent and decreeing the Special Civil Suit No.931 of 1987 filed by the Respondent setting aside the Order of Civil Judge

dated 8.8.1991 dismissing the Plaintiff's Suit.

2. I heard the learned counsel for both the parties. Perused the record.

3. The suit was filed by the plaintiff for recovery of the amount at the foot of contract between the parties pertaining to the paper that was supplied to the defendants for the purpose of printing the books. The plaintiff is the Maharashtra State Bureau of Text Book Production and Society registered under the Societies Registration Act, having entrusted the works of printing text books, who had entrusted the printing books to the defendants for which purpose certain quantity of paper was supplied. It was decided between the parties that the plaintiff would supply the paper to the defendants for the work of printing and accordingly agreement was executed between the parties at Pune. The physical verification of the paper was taken by the plaintiff at the defendant's place on 30.9.1984. Thereafter the plaintiff noticed that there was shortage and loss of papers as against which was supplied by the plaintiff to the defendants. According to the plaintiff, the paper amounting to 9318.800 kgs was found to be deficit, which

was valued at Rs.1,39,782/=. The plaintiff demanded the papers and alternatively demanded the price thereon by notice. The defendant challenged demand and hence the suit came to be filed.

4. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove his claim and also came to the conclusion that the suit is barred by law of limitation and suit came to be dismissed. Being aggrieved by the said judgment and order the plaintiff filed an appeal in District Court Pune. The learned Appellate Court adjudicated the dispute on merits and came to the conclusion that the suit deserve to be decreed and as such the appeal was allowed with costs holding that the Civil Court Pune had jurisdiction to try and entertain the suit and the suit claim was within the limitation. Hence the present Appeal.

5. At the outset it may be noted that only two questions of law sought to be raised at this stage are regarding issue of limitation as well as issue of jurisdiction of the Civil Court Pune to try and entertain the suit. In this regard it must be noted

that the learned Lower Appellate Court Judge has rightly relied upon Article 70 of the Limitation Act in order to hold that the suit is filed within limitation because the cause of action arose in the year 1985 when the claim made by the plaintiff was refused by the defendant and the suit is said came to be filed within three years from such refusal.

. Similarly the question of jurisdiction came to be adjudicated by the learned Appellate Court Judge holding that evidence on record was sufficient to show that initial contract had taken place between the parties at Pune where the head office of the plaintiff was admittedly located and therefore the printed clause in the conditions of the plaintiff to the effect that the jurisdiction would be at Mumbai would not prevail under the facts and circumstances involved in the dispute.

. The learned counsel for the appellant also sought to raise contention to the effect that the Lower Appellate Court had erred in holding that it was the defendant who had not discharged the burden to establish the claim, however, on perusal of the judgment of the Lower Appellate Court it is seen that the correspondence

between the parties was available for the perusal of the Lower Court on which basis the Ld.Lower Appellate Court has rightly adjudicated the dispute and has decreed the suit.

6. In the result the appeal deserves to be dismissed and dismissed in limine. Consequently the Civil application stands dismissed with no order as to costs.